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democracy corresponding to the *vergadering* of Java. In Burma the village has become merely an administrative unit, whereas in Java the village still appears to be mainly a social unit. And it would hardly be possible to find a more striking contrast than between the Village Act of Java, designed as an instrument of social uplift, and the Village Act of Burma, designed as an instrument of law and order and 'vigorously enforced' by fines on villages, villagers and headmen. Government schemes in Java, we are told, 'risk failure if they appeal to the individual economic instincts and have a fair chance of being comprehended and accepted, if they are based on a foundation of organic co-operation'.[1]

Indebtedness. Both in Burma and Java agricultural indebtedness has accompanied, and has indeed been a condition of, economic progress. It was through giving out advances that the planter in Java secured his land and labour, and that the miller in Burma made certain of getting an adequate supply of paddy at the lowest possible rate. The Dutch, with their State pawnshops and People's Banks, have done more than has been attempted in Burma to provide credit on sound lines, but they have by no means solved the problem of indebtedness; alongside the state institutions the private moneylender still flourishes. But the application of native customary law to land, and the prohibition against the alienation of land to foreigners have obviated the most pernicious social and political consequences of agricultural indebtedness, and it is not in the same measure as in Burma a cause of agricultural distress and political ill-will.

Litigation and Crime. Until quite recently litigation was as unusual in Burma as it still is in Java. But in Burma the people have been encouraged to settle their disputes by the processes of western law; whereas in Java, customary law and the practice of arbitration and the settlement of disputes by reasonable compromise have survived.

An even greater contrast is presented in respect of crime. In Java the death sentence is almost unknown; for the five years from 1935 to 1939, with a population for the whole of Netherlands India of nearly 70 million, only three persons were sentenced to death; in Burma, with a fifth of the population, the death sentence is passed on some two hundred a year and upwards of a hundred a year are hanged. It is difficult to compare sentences of imprisonment, but the position in Java is very different from that in Burma where, for some thirty years, the accommodation for convicts has failed to keep pace with

[1] Hart, p. 65.

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more or less directly with local manufactures, and create unemployment among artisans and craftsmen. Some of these find employment in agriculture, and the enlarged supply of labour tends to reduce agricultural wages and to lower the cost of trade crops to the exporter, but to the prejudice of the agricultural labourer. For various reasons many will be unable to turn to agriculture and will be left without employment. Where, as in Lower Burma, agriculture develops along industrial lines, there grows up a mass of part-time labour, unable to find employment for about half of the year and with no other source of livelihood but crime. Thus the free action of economic forces tends to create unemployment and under-employment.

One feature of the encouragement of native enterprise in cultivation for export is the introduction of the rule of law. The rule of law is a foundation stone of western freedom, and should provide a far more secure basis for society than the rule of personal authority. But this is true only where the law is an expression of social will; in a tropical dependency it expresses the will of the colonial power, and is an instrument of economic development. The rule of law becomes in effect the rule of economic law. The ideas embodied in the western law of property and contract are foreign to the tropics. Even attempts to apply local law, or to embody local custom in legal codes, must fail if made in western courts according to western procedure by lawyers who, as was said formerly in Java, 'look on native law as a doctor looks on native medicine'.[1] Unwritten custom changes its character when formalized in law and legal decisions, and we have noticed how 'Buddhist law' has been applied in Burma. In India, Elphinstone remarked that Hindu law was 'as a whole beyond the knowledge of perhaps the most learned pundit, and every part beyond the knowledge of the people who live under it.... The uncertainty of decisions obtained from such sources must be obvious, especially when required for the guidance of a foreign judge both to the written law and to the usage which supplies its place.'[2] Indigenous law or custom administered in a foreign court is no less foreign than law proceeding directly from a foreign ruler. In either case one result is the encouragement of disputes and litigation, because people can appeal against the custom that all know to the law which no one knows. Law encroaches on custom, and the decay of custom encourages the resort to litigation. Moreover, as is notorious, for reasons already

[1] *Netherlands India*, p. 218. [2] Cotton, p. 182.

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691 indicated, education tends to flood the land with lawyers, who foster litigation for their living. The growth of litigation in India has long been deplored. In Burma there was little litigation until rapid economic development began in 1870, and so late as 1886 it could still be said that Burmans were not litigious. That is no longer true. We find the same plague of lawyers in Indo-China and the Philippines, and in Africa litigation has been described as the curse of the country. 674 The law breeds litigation and this, married to poverty by agrarian distress, breeds crime. Here again Burma is exceptional, but it appears that of the four countries in the world with the highest proportionate jail population, three are British dependencies.[1] All this is nothing new. In Burma, as far back as 1883, dacoit bands flourished just outside the capital. So they did in Java in 1830, when the introduction of western law by Raffles created a 'proletariat who go about and steal'. Still earlier in Madras, on the introduction of the rule of law from Bengal at the end of the eighteenth century, 'the same results', says Munro, 'followed here which had occurred elsewhere; justice ceased in great measure to be administered and the increase of crime was appalling'.[2] These words might have been taken from any report on the administration of Burma from the eighties onwards.

696 Under native rule disputes are usually settled by arbitration. Under European rule it is at first only in cases with foreigners that natives come to court. Naturally Europeans best understand their own laws, and the middlemen and moneylenders learn it in the course of business, but the cultivator neither understands the law nor how it works and, as a rule, is least able to afford a skilful advocate. The decision usually goes in favour of the longer purse. Men who lose their case against a wealthier opponent and without understanding that a decision, apparently arbitrary and in their view unjust, may none the less be good law, naturally attribute the result to bribery, and this is the readiest excuse given by their advocate for his failure. Nothing is so favourable to judicial corruption as a belief that it is general. That is a principle which works in Africa as in Asia.[3] It seems, indeed, to be generally true in tropical dependencies that western law encourages litigation, crime and corruption.

182 The substitution of the rule of law for the rule of custom naturally expedites the disintegration of the customary social structure. But it also reacts more directly on the social structure. The former native

[1] Barnes, L., *Skeleton of the Empire* (1937), p. 60.
[2] Gleig, pp. 221–2. [3] *Colonial Review*, 1944, June, p. 170.